

01
02
03
04
05
06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 UNITED STATES OF AMERICA,) CASE NO. CR09-219-RAJ
09 Plaintiff,)
10 v.) SUMMARY REPORT OF U.S.
11 NIKOS DELANO DORSEY,) MAGISTRATE JUDGE AS TO
12 Defendant.) ALLEGED VIOLATIONS
OF SUPERVISED RELEASE
13 _____)

14 An evidentiary hearing on supervised release revocation in this case was scheduled
15 before me on April 10, 2012. The United States was represented by AUSA Kate Vaughn and
16 the defendant by Jay Stansell. The proceedings were digitally recorded.

17 Defendant had been sentenced on or about March 30, 2004 by the Honorable James K.
18 Singleton in the District of Alaska on charges of Possession of Cocaine Base with Intent to
19 Distribute, Possession of a Firearm During and in Relation to and in Furtherance of a Drug
20 Trafficking Crime, and Possession of a Firearm in a School Zone. The sentence was 98
21 months custody, consisting of 37 months on Count 1, one month on Count 3 consecutive to

22
SUMMARY REPORT OF U.S. MAGISTRATE JUDGE AS
TO ALLEGED VIOLATIONS OF SUPERVISED RELEASE

01 Count 1, and 60 months on Count 2 consecutive to Counts 1 and 3. (Dkt. 3 at 24.) Supervised
02 release of six years, five years, and 1 year concurrently was also imposed.

03 The conditions of supervised release included the standard conditions plus the
04 requirements that defendant submit to mandatory drug testing, participate in a substance abuse
05 program, participate in mental health treatment, submit to search, and not possess a firearm,
06 destructive device, or other weapon. An amended judgment was entered on November 22, 2005
07 (Dkt. 3 at 33) changing the sentence to 79 months custody (18 months on Count 1, 60 months
08 on Count 2 and 1 month on Count 3, consecutively), plus 6 years supervised release. The case
09 was transferred to this District on July 2, 2009. (Dkt. 3 at 3.)

10 On October 21, 2009, defendant's probation officer reported that defendant had violated
11 the conditions of supervised release by leaving the District without permission. No action was
12 taken at the time. (Dkt. 4.) On November 2, 2010, defendant's probation officer reported
13 defendant tested positive for cocaine. He was placed in a structured testing program,
14 reprimanded, and referred for professional assessment. No further action was taken at the
15 time. (Dkt. 5.)

16 On January 6, 2011, defendant admitted violating the conditions of supervised release
17 by using cocaine, failing to notify his probation officer within 72 hours of being arrested, failing
18 to participate in a substance abuse evaluation, and failing to report for substance use testing.
19 (Dkt. 11.) Defendant was sentenced to time served. (Dkt. 16.) Additional conditions of
20 supervised release were added, requiring defendant to abstain from alcohol, not enter any
21 establishment where alcohol is the primary commodity for sale, and provide his probation

22

SUMMARY REPORT OF U.S. MAGISTRATE JUDGE AS
TO ALLEGED VIOLATIONS OF SUPERVISED RELEASE

01 officer with access to financial information upon request. (*Id.* at 5.)

02 On August 4, 2011, defendant admitted violating the conditions of supervised release by
03 using cocaine, failing to report for urinalysis testing, and consuming alcohol. (Dkt. 24.) While
04 the matter was pending disposition, defendant's probation officer filed a report alleging
05 defendant used cocaine on September 9, 2011. (Dkt. 26.) He was found to have committed
06 the additional violation on September 30, 2011. (Dkt. 35.) Defendant was sentenced to 60
07 days in custody, three years supervised release. (Dkt. 40.) An additional condition of release
08 was the requirement that defendant reside in and satisfactorily complete a residential reentry
09 center program for up to 60 days. (*Id.* at 4.)

10 In an application dated March 12, 2012 (Dkt. 41, 42), U.S. Probation Officer Angela M.
11 McGlynn alleged the following violations of the conditions of supervised release:

12 1. Failing to reside in and satisfactorily participate in a residential reentry center
13 program for up to 60 days as of December 19, 2011, in violation of the special condition that
14 requires the defendant to reside in and satisfactorily participate in a residential reentry center
15 program for up to 60 days or until discharged by the Program Manager with the approval of the
16 U.S. Probation Officer.

17 2. Failing to report for urinalysis testing as directed on or about March 1, 2012, in
18 violation of the special condition that required the defendant to report for testing as directed.
19 (The government moved to dismiss an allegation that a similar failure to report had occurred on
20 December 29, 2011.)

21

22

SUMMARY REPORT OF U.S. MAGISTRATE JUDGE AS
TO ALLEGED VIOLATIONS OF SUPERVISED RELEASE

01 3. Using cocaine on or about March 5, 2012, in violation of standard condition No.

02 7.

03 4. Consuming alcohol on or about March 10, 2012, in violation of the special

04 condition that prohibits the defendant from drinking alcohol.

05 Defendant denied the allegations and an evidentiary hearing was conducted.

06 As to alleged violation 1, I find that a preponderance of the evidence establishes that the

07 defendant violated the conditions of supervised release by failing to satisfactorily complete the

08 residential reentry program by being terminated from the program on December 19, 2011.

09 Plaintiff's Exhibit 1 shows multiple incident reports filed by RRC staff consisting of violations

10 such as failing to complete cleaning detail chores, playing loud music and using profanity when

11 the radio was confiscated, being late returning to the RRC, and possessing a secondary cell

12 phone. Defendant was admitted to the RRC on November 28, 2011 and terminated from the

13 program on December 19, 2011.

14 As to alleged violation 2, I find that a preponderance of the evidence establishes that

15 defendant violated the conditions of supervised release by failing to report for urinalysis testing

16 as directed on or about March 1, 2012. Defendant admitted that he failed to report for testing

17 because of a conflict with his work schedule. However, defendant did not call his probation

18 officer to report the difficulty or attempt to reschedule.

19
20 As to alleged violation 3, I find that a preponderance of the evidence establishes that

21
22
**SUMMARY REPORT OF U.S. MAGISTRATE JUDGE AS
TO ALLEGED VIOLATIONS OF SUPERVISED RELEASE**

01 defendant violated the conditions of supervised release by testing positive for cocaine on March
02 5, 2012. (Plaintiff's Exhibit 3.)

03 As to alleged violation 4, I find that a preponderance of the evidence does not establish
04 the violation. Although the report from the Seattle Police Department (Plaintiff's Exhibit 2)
05 establishes that defendant was found lying in the door of a hallway on March 10, 2012 at about
06 1611 hours, seeming to be lost and confused, with watery and bloodshot eyes, unable to form
07 words, and without shoes, the evidence does not specifically establish that defendant had
08 consumed alcohol or was intoxicated from the consumption of alcohol.

09 I therefore recommend the Court find defendant violated his supervised release as
10 alleged in violations 1, 2, and 3, and that the Court conduct a hearing limited to the issue of
11 disposition. I recommend that violation 4 be dismissed. The next hearing will be set before
12 Judge Jones.

13 Pending a final determination by the Court, defendant has been detained.

14 DATED this 10th day of April, 2012.

15

16



17

Mary Alice Theiler
United States Magistrate Judge

18

19 cc: District Judge: Honorable Richard A. Jones
AUSA: Kate Vaughn
20 Defendant's attorney: Jay Stansell
Probation officer: Angela McGlynn

21

22

SUMMARY REPORT OF U.S. MAGISTRATE JUDGE AS
TO ALLEGED VIOLATIONS OF SUPERVISED RELEASE